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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Sebastian W. Craynon,

9 Plaintiff,

10 v.

11 CitiMortgage Incorporated,

12 Defendant.

13 No. CV 11-8081-PCT-JAT

14 **ORDER**

15 Pending before the Court are (1) Defendant's Motion to Remand to State Court
16 (Doc. 16), (2) Defendant's Motion to Dismiss Second Amended Complaint (Doc. 17), (3)
17 Plaintiff's Motion for Default Judgment (Doc. 19), (4) Defendant's Motion for Summary
18 Disposition (Doc. 21), and (5) Plaintiff's Motion for Evidentiary Hearing (Doc. 22). The
Court now rules on the Motions.

19 **I. BACKGROUND**

20 On April 18, 2011, CitiMortgage, Inc. filed a forcible detainer action against
21 Harvey Holder and John Doe Occupant in Mohave County Superior Court. Plaintiff is
22 the occupant of the property that is the subject of that State Court action (the "Property").
23 On May 17, 2011, Plaintiff filed a "Notice of Change of Venue" in Mohave County
24 Superior Court. On May 19, 2011, Plaintiff filed a Complaint in this Court seeking quiet
25 title to the Property. Plaintiff did not file a Notice of Removal and this Court did not treat
26 Plaintiff's Complaint as a removal action from the Mohave County Superior Court. The
27 Mohave County Superior Court treated Plaintiff's Notice of Change of Venue and
28 Complaint filed in this Court as divesting it of jurisdiction and has stayed proceedings in

1 that Court pending a decision from this Court on Defendant's Motion to Remand.
 2 Plaintiff has amended his Complaint twice in this case. Defendant now seeks remand or
 3 dismissal of this case.

4 Plaintiff did not file a response to Defendant's Motion to Dismiss for lack of
 5 subject matter jurisdiction and/or for failure to state a claim upon which relief can be
 6 granted.¹ In response to Defendant's Motion to Remand, Plaintiff argues that Arizona
 7 Revised Statutes section 12-1177(A), regarding actions for forcible entry and detainer, is
 8 unconstitutional. However, Plaintiff did not make any such allegation in his Complaint,
 9 his First Amended Complaint, or his Second Amended Complaint.

10 Moreover, because Plaintiff clearly attempted to remove this action from Mohave
 11 County Superior Court and Mohave County Superior Court treated this as a removed
 12 action based on Plaintiff's representations to it, the Court will also treat this action as
 13 removed from Mohave County Superior Court and will thus analyze whether remand is
 14 appropriate in this removed action.²

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16 ¹ Plaintiff did file a Motion for Default Judgment on November 4, 2011.
 17 However, it does not appear that Defendant has ever been served in this case and Plaintiff
 18 has never filed any proof that Defendant has been served. Further, on October 13, 2011,
 19 Defendant specially appeared in this case and requested that the Court remand the action
 to Mohave County Superior Court. Accordingly, because Plaintiff has never filed a proof
 of service and because Defendant has appeared to defend itself in this case, Plaintiff is
 not entitled to Default Judgment.

20 On December 6, 2011, Plaintiff filed a "Motion for Evidentiary Hearing," which
 21 appears to the Court to be a request for oral argument on Defendant's Motion to Dismiss
 22 and Defendant's Motion to Remand. However, oral argument would not aid the Court's
 23 decisional process in deciding the motions pending before the Court. See e.g., *Partridge*
v. Reich, 141 F.3d 920, 926 (9th Cir. 1998); *Lake at Las Vegas Investors Group, Inc. v. Pac. Dev. Malibu Corp.*, 933 F.2d 724, 729 (9th Cir. 1991). Accordingly, Plaintiff's
 Motion for Evidentiary Hearing (Doc. 22) is denied.

24 ² Plaintiff cannot have an action stayed in state court based on removal and then
 25 attempt to assert that it is not a removal action, but that it is a new action in this Court.
 26 The only reason the Clerk of this Court did not treat this as a removal action is because
 27 Plaintiff failed to properly demonstrate that this case was being removed to this Court.
 28 Accordingly, this Court must treat this as a removed action (as Plaintiff represented to the
 Mohave County Superior Court and attempted to represent in his Complaint filed with
 this Court). It would be entirely inequitable for this Court to treat this as a new action,
 only to leave Defendant's state court action languishing based on Plaintiff's failure to
 properly file the removal paperwork with this Court.

1 Defendant argues that this case should be remanded because Defendant's
 2 Complaint in state court solely alleged a forcible detainer action, which does not present
 3 a federal question and, thus, Plaintiff's only basis for removal could be diversity.
 4 Defendant further argues that this Court does not have diversity jurisdiction because
 5 Plaintiff cannot satisfy the amount in controversy requirement because actions for
 6 forcible detainer are actions only for the right of possession and, thus, there is no amount
 7 in controversy.

8 **II. LEGAL STANDARD**

9 A district court may exercise removal jurisdiction only if it would have original
 10 subject matter jurisdiction over the action as originally brought by the plaintiff. 28
 11 U.S.C. § 1441(a). A case is therefore removable if either diversity or federal question
 12 jurisdiction exists. *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009)
 13 (citing 28 U.S.C. § 1441). Because there is a strong presumption against removal
 14 jurisdiction, the removing party bears the burden of establishing that removal is proper
 15 and any doubt or ambiguity must be resolved in favor of remand. *Id.*; *Gaus v. Miles, Inc.*,
 16 980 F.2d 564, 566 (9th Cir. 1992). If at any time before final judgment it appears that the
 17 district court lacks subject matter jurisdiction over a case removed from state court, the
 18 case must be remanded. 28 U.S.C. § 1447(c).

19 District courts have diversity jurisdiction over civil actions between citizens of
 20 different states where the amount in controversy exceeds \$75,000, exclusive of interest
 21 and costs. 28 U.S.C. § 1332(a).

22 **III. ANALYSIS**

23 Here, because the sole issue in a forcible detainer action is the right of possession,
 24 not title, there is no amount in controversy in the absence of other relief sought. *Federal*
Nat'l. Mortgage Ass'n v. Sandoval, No. CV-10-0346-PHX, NVW, 2010 WL 1759353, at
 25 *1 (D. Ariz. April 30, 2010) (internal citation omitted); *see* Ariz. Rev. Stat. Ann. § 12-
 26 1177(A) ("On the trial of an action of forcible detainer, the *only issue* shall be the right of
 27 actual possession and the *merits of title shall not* be inquired into") (emphasis added).

1 Therefore, diversity jurisdiction does not exist in this case.

2 Further, to the extent that Plaintiff attempts to raise a “federal defense” by arguing,
3 in his Response to the Motion to Remand (although not alleged in Plaintiff’s
4 “Complaint”), that Arizona Revised Statutes section 12-1177(A) is unconstitutional,
5 under the well-pleaded complaint rule, “federal jurisdiction exists only when a federal
6 question is presented on the face of plaintiff’s properly pleaded complaint.” *Hunter*, 582
7 F.3d at 1042 (internal quotation and citation omitted). Thus, federal jurisdiction cannot
8 be predicated on a defense, even if that defense is anticipated and is the “only question
9 truly at issue in the case.” *Id.* Accordingly, Plaintiff’s attempt to establish federal
10 question jurisdiction fails and Plaintiff has not otherwise overcome the strong
11 presumption against removal jurisdiction.

12 **IV. CONCLUSION**

13 Based on the foregoing, this Court lacks subject matter jurisdiction over this case.
14 Accordingly,

15 **IT IS ORDERED** that Defendant’s Motion to Remand to State Court (Doc. 16) is
16 granted.

17 **IT IS FURTHER ORDERED** that Defendant’s Motion to Dismiss Second
18 Amended Complaint (Doc. 17) is denied as moot.

19 **IT IS FURTHER ORDERED** that Plaintiff’s Motion for Default Judgment (Doc.
20) is denied.

21 **IT IS FURTHER ORDERED** that Defendant’s Motion for Summary Disposition
22 (Doc. 21) is denied as moot.

23 **IT IS FURTHER ORDERED** that Plaintiff’s Motion for Evidentiary Hearing
24 (Doc. 22) is denied.

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1 The Clerk of the Court shall cause a copy of this Order to be filed in Mohave
2 County Superior Court Case No. S-8015-CV201100616. The Clerk of the Court shall
3 close this case.

4 Dated this 21st day of May, 2012.


James A. Teilborg
United States District Judge